

<p style="text-align: center;">IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</p>	<i>Application Number</i>	10/522,068
	<i>Filing Date</i>	1/21/2005
	<i>First Named Inventor</i>	Haydn N.G. WADLEY
	<i>Group Art Unit</i>	1775
	<i>Examiner Name</i>	A. Austin
	<i>Attorney Docket Number</i>	3053.138.US
<p><i>Title of the Invention: METHOD FOR MANUFACTURE OF CELLULAR MATERIALS AND STRUCTURES FOR BLAST AND IMPACT MITIGATION AND RESULTING STRUCTURE</i></p>		

PETITION FROM RESTRICTION REQUIREMENT UNDER 37 CFR § 1.144

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a petition from the restriction requirement in the Office action dated January 10, 2007. The restriction requirement requires an election between claims 1-35 directed to a structure, and claims 36-39 directed to a method of constructing the structure as set forth in claims 1-35. Reconsideration of the restriction requirement was requested in the responses filed May 9, 2007 and December 10, 2007 but did not result in withdrawal of the requirement. The Director is requested to vacate the restriction requirement and direct the rejoinder of claims 36-39 with claims 1-35, for the following reasons.


37 CFR 1.475(b) provides that "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (1) A product and a process specially adapted for the manufacture of said product." Here, claims 1-35 and claims 36-39 are related as a product and a process for manufacturing the product respectively. Hence, under the applicable rule, 37 CFR 1.475(b)(1), the present application must be considered to have unity of invention. In view of this, the restriction requirement is improper as it violates Rule 475(b).

The Office states that the traversal is not persuasive because “this fails to differentiate the present claims from the prior art cited in the restriction requirement.” Notwithstanding the violation of Rule 475(b), which in and of itself requires the restriction requirement to be vacated, the restriction requirement is clearly improper, as the alleged lack of unity of invention is based not on what is set forth in the various claims, but instead is based on alleged unpatentability over prior art. Unpatentability over prior art has no relevance at all to the asserted lack of unity of invention.

The principle underlying the requirement for unity of invention is analogous to the principle underlying restriction practice: that is, a patent should be directed to a single invention. Whether or not a patent application contains claims that may be unpatentable over prior art has no relation at all with the question of whether the claims of the application are directed to the same invention. The absurdity of basing unity of invention on patentability over prior art is plain. Under such interpretation, a persuasive showing that the claims are patentable over the prior art would obviate the requirement without necessitating any amendment of the claims. Thus, claims to patentably distinct inventions, patentable over the prior art, would not be restrictable, while claims directed to the same invention would be restrictable. Clearly, patentability over prior art has no relevance whatsoever to unity of invention.

In view of the foregoing, the Director is requested to vacate the restriction requirement and order rejoinder of claims 36-39 with claims 1-35. In the event that the Director determines that the restriction requirement is proper, the Director is requested to explain the purpose of Rule 475(b) and why such rule does not apply to national stage applications.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17
to Novak Druce Deposit Account No. 14-1437.

RESPECTFULLY SUBMITTED,					
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